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 DEPARTMENT OF LABOR

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

THE CENTER FOR INVESTIGATIVE  
 REPORTING and WILL EVANS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
 LABOR,

Defendant.

) Case No. 22-cv-07182-WHA

) **JOINT CASE MANAGEMENT STATEMENT**  
 ) **AND [PROPOSED] ORDER**

) Date: April 13, 2023  
 ) Time: 11:00 a.m.  
 ) Place: Courtroom 12, 19th Floor

) The Hon. William Alsup

Pursuant to Clerk’s Notice dated March 6, 2023, Dkt. No. 22, and pursuant to the Standing Order for All Judges of the Northern District of California dated January 17, 2023, and Civil Local Rule 16-9, the parties jointly submit this Joint Case Management Statement (“JCMS”) and Stipulated Request To Continue Case Management Conference.

1. Jurisdiction and Service

There are no issues concerning personal jurisdiction, venue, or service. Plaintiff brought this action under the Freedom of Information Act (“FOIA”), 5 U.S.C § 552(a)(4)(B). Defendant has been

1 served.

2 2. Facts

3 This lawsuit was filed on November 15, 2022, and relates to four FOIA requests submitted by  
4 Plaintiffs Center for Investigative Reporting (“CIR”) and Will Evans to the Office of Federal Contract  
5 Compliance Program (“OFCCP”), a component of the U.S. Department of Labor (“DOL”), between  
6 January 2019 and June 2022. These requests were modified into a single FOIA Request as of June 3,  
7 2022, seeking the disclosure of consolidated (Type 2) EEO-1 reports for all federal contractors for the  
8 years 2016 through 2020. EEO-1 Type 2 reports require companies to report the total number of  
9 employees across their establishments by race/ethnicity, gender, and job category.

10 DOL calculates that this request encompasses approximately 75,000 reports from a total of  
11 approximately 24,000 unique federal contractors. DOL began actively processing this request after  
12 Plaintiffs’ final modification in June 2022. DOL has begun its rolling release of records with a small  
13 release on March 2, 2023. It is continuing the processing of the remaining records.

14 Since the last JCMS, DOL completed the mailing of a final notice to the submitting federal  
15 contractors. This notice provided a final response date of March 31, 2023 for contractors to submit  
16 objections to the release of their data. DOL is now in the process of sorting the data and reconciling the  
17 list of objectors against the approximately 75,000 reports so that it can release the information of non-  
18 objectors. DOL is on track for release of the non-objector data on or before April 17, 2023, as targeted  
19 in the March 3, 2023 JCMS, Dkt. No. 21. On April 12, 2023, DOL will provide CIR the anticipated  
20 total number of reports to be released and the total number of objections received, subject to the  
21 understanding that these numbers may be adjusted slightly as the release is finalized in the following  
22 five days.

23 OFCCP’s jurisdiction team is continuing to examine the responses of additional companies that  
24 have asserted non-contractor status. An additional small release is anticipated following that process,  
25 which should be completed on or before May 31, 2023.

26 Following the release of non-objectors’ data, the remaining reports will require further  
27 evaluation to determine whether they will be withheld under FOIA Exemption 4 and possibly other  
28 exemptions. Due to the number of reports and the complexity of the evaluation process, DOL

1 anticipates that the evaluation process, which will be done on a rolling basis, will be complete by the end  
2 of September 2023.

3 OFCCP anticipates that a supplemental release of reports may be made at this time or sooner if it  
4 determines that the objections do not support the assertion of an exemption. OFCCP also anticipates  
5 that it may assert that a number of reports are exempt from disclosure after this review process.

6 The parties have and will continue to confer on an ongoing basis.

7 3. Legal Issues

8 Defendant: DOL does not yet know how many reports will be withheld under Exemption 4.  
9 DOL anticipates that the parties will engage in a meet and confer process following the completion of  
10 processing as described above regarding any withholdings. DOL believes that following the completion  
11 of processing, the following legal issue may be in dispute: whether Defendant has appropriately  
12 asserted Exemption 4 with respect to any EEO-1 reports that are not released.

13 Plaintiffs: Legal issues will include whether Defendants properly refused to withhold  
14 records under FOIA, including but not limited to FOIA Exemption 4 and whether FOIA obligations  
15 were improperly thwarted through agency regulations.

16 4. Motions

17 There are no prior or pending motions. The parties anticipate that this matter can be resolved on  
18 cross-motions for summary judgment if the parties cannot informally resolve the matter.

19 5. Amendments of Pleadings

20 The parties do not anticipate amending their pleadings.

21 6. Evidence Preservation

22 The parties have reviewed the Guidelines Relating to Discovery of Electronically Stored  
23 Information (“ESI Guidelines”). The parties confirm that they have met and conferred regarding  
24 reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident  
25 in this action.

26 7. Disclosures

27 The parties request that they be relieved from the initial disclosure requirements of Federal Rule  
28 of Civil Procedure 26(a). The parties agree that initial disclosures are not necessary as this is a FOIA

1 action.

2 8. Discovery

3 To date, no discovery has been taken by any party, and the parties do not anticipate based on  
4 current information that discovery will be necessary in this case.

5 9. Class Actions

6 Not applicable.

7 10. Related Cases

8 Not applicable.

9 11. Relief

10 The parties will each seek summary judgment. Plaintiffs seek an order directing Defendant to  
11 produce all of the contested documents and further order any appropriate attorneys' fees. Defendant  
12 denies that Plaintiffs are entitled to any relief and will seek dismissal.

13 12. Settlement and ADR

14 The parties anticipate that they will file motions for summary judgment. The parties request that  
15 any consideration of ADR be deferred until after the summary judgment motions are decided.

16 13. Other References

17 The parties do not believe that this case is suitable for reference to binding arbitration, a special  
18 master, or the Judicial Panel on Multidistrict Litigation.

19 14. Narrowing of Issues

20 The parties will continue to meet and confer in an attempt to narrow issues.

21 15. Expedited Trial Procedure

22 The parties believe that this case can be resolved on summary judgment. The expedited trial  
23 procedure is therefore inapplicable.

24 16. Scheduling

25 The parties anticipate that this matter can ultimately be resolved on summary judgment. As set  
26 forth above, DOL anticipates that its final release will occur following the completion of the review  
27 process at the end of September 2023. DOL believes that summary judgment practice should occur after  
28 the completion of the September 2023 production, after DOL has made a final determination as to

whether it will withhold the requested information under an applicable exemption. Plaintiffs believe that summary judgment motion practice is appropriate at a sooner stage, in the next several months, and a summary judgment motion schedule should be set as soon as possible, particularly given the Plaintiffs' newsworthy interest in the records. The parties respectfully propose that the Court schedule an additional case management conference for May 11, 2023, and that the parties provide a status report seven days before the conference regarding the progress of the release and whether a summary judgment motion schedule can be set at that time.

17. Trial

The parties anticipate that this entire case may be resolved on summary judgment.

18. Disclosure of Non-party Interested Entities or Persons

On November 15, 2022, Plaintiffs filed their Certificate of Interested Entities, Dkt. 3, stating Plaintiffs had no such interested entities or persons.

Defendant is exempt from this requirement as a federal government entity pursuant to Civil Local Rule 3-15.

19. Professional Conduct

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

20. Other

The parties believe that there are no other case management orders necessary in this case and request that the Court continue the Case Management Conference.

DATED: April 6, 2023

Respectfully submitted,

ISMAIL J. RAMSEY  
United States Attorney

/s/ Pamela T. Johann  
PAMELA T. JOHANN  
Assistant United States Attorney

Attorneys for Defendant

1 DATED: April 6, 2023

THE CENTER FOR INVESTIGATIVE  
REPORTING

2  
3 /s/ D. Victoria Baranetsky

D. VICTORIA BARANETSKY

4 Attorneys for Plaintiffs

5 **ATTESTATION**

6 I, Pamela T. Johann, hereby attest under penalty of perjury that in compliance with Civil Local  
7 Rule 5-1(h)(3), I have obtained the concurrence in the filing of this document from D. Victoria  
8 Baranetsky.

9 /s/ Pamela T. Johann

10 PAMELA T. JOHANN